

February 15, 2002

OIL AND GAS DOCKET NO. 10-0230501

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APPLICATION OF DYNE OIL & GAS, INC. TO RESCIND AND MODIFY IN PART, THE DEFAULT FINAL ORDER ENTERED IN DOCKET NO. 10-0224181, PANHANDLE GRAY COUNTY FIELD, GRAY COUNTY, TEXAS.

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**APPEARANCES:**

**FOR APPLICANT:**

Lloyd Muennink, Attorney  
Greg Hill, President

**APPLICANT:**

Dyne Oil & Gas, Inc.  
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**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE OF REQUEST FOR ACTION:</b>	January 23, 2002
<b>DATE CASE HEARD:</b>	February 5, 2002
<b>HEARD BY:</b>	Mark Helmueller, Hearings Examiner Margaret Allen, Technical Examiner
<b>PFD CIRCULATION DATE:</b>	February 15, 2002

**STATEMENT OF THE CASE**

This application seeks to rescind and modify the Default Final Order in Oil & Gas Docket No. 10-0224181 entered on October 10, 2000 which required Dyne Oil & Gas, Inc. (hereinafter “Dyne”) to plug Well No. 6 on the Gray (01708) Lease, Panhandle Gray County Field, Gray County, Texas. Dyne claims that plugging Well No. 6 will result in waste of hydrocarbons.

## **SUMMARY OF EVIDENCE**

The examiners took official notice of the Default Final Order in Docket No. 10-0224181. Dyne designated itself as the operator of the Gray (01708) Lease by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance), effective October 1, 1980. Dyne last reported production on the Gray Lease in March 1998. Commission records show the total reported production for the Gray Lease between January 1997 and March 1998, to be 73 barrels. The average production during this period was less than 5 barrels per month, with a maximum reported monthly production of 8 barrels. This is less than one barrel of oil per well, per month.

On December 3, 1987, Dyne filed an application to convert Well No. 6 to an injection well. The well was permitted as an injection well on January 13, 1988. No injection activity was ever reported for Well No. 6 and Dyne asserted that the well was never used for injection. Dyne presented correspondence dated January 1989 in which it advised the Commission that it was not proceeding with the conversion project due to an active secondary recovery project on the adjacent lease. Dyne did not re-equip the well for production or file an amended Form W-1 (Application to Drill, Deepen, Plug Back or Reenter) to convert Well No. 6 to a producing well as required under the provisions of the injection well permit. There are no records that Well No. 6 was converted to a producing well after January 1989. Additionally, no records attribute any production to the well from January 1989 to April 2001. Dyne admits that there was no production from the well for at least 3 years prior to April 2001.

Dyne submitted evidence that in April 2001, approximately 6 months after the Commission entered the Final Default Order requiring Well No. 6 to be plugged, it performed a bailing test on the well during which it was able to skim 1.3 barrels of oil from the top of the fluid in the wellbore in a period of 45 minutes. Dyne argued that this bailing test was evidence that the well could produce up to 40 barrels of oil per day. Dyne believes that the now abandoned secondary recovery project swept oil underneath the Gray Lease which is present in and around Well No. 6. Dyne claims that plugging the well would therefore result in the waste of oil.

Dyne also indicated that it had entered into an agreement to transfer the Gray Lease to Tryma Operating. Dyne claimed that Tryma supports the application to rescind or modify the order and that its agreement with Tryma is dependent upon the Commission's approval of this application.

## **EXAMINERS' OPINION**

Dyne argued that rescission and modification of the Default Final Order entered in Oil & Gas Docket No. 10-0224181 is necessary to prevent the waste of hydrocarbons. The prevention of waste is an appropriate basis for requesting a hearing modifying a Commission Order as provided for by Texas Natural Resources Code §85.049. However, §85.049 provides no guidance with respect to the elements required to be shown in order to establish that waste may occur.

The Texas Supreme Court defined waste in *Gulf Land Co. v. Atlantic Refining Co.*, 131 S.W.2d 73 (Tex. 1939):

The term 'waste,' as used in oil and gas Rule 37, undoubtedly means the ultimate loss of oil. If a substantial amount of oil will be saved by the drilling of a well that otherwise would ultimately be lost, the permit to drill such well may be justified under one of the exceptions provided in Rule 37 to prevent waste.

In general, an applicant seeking an exception to Commission rules in order to prevent waste must establish three elements: 1) that unusual conditions, different from conditions in adjacent parts of the field, exist under the tract for which the exception is sought; 2) that, as a result of these conditions, hydrocarbons will be recovered by the well that would not be recovered by any existing well or by additional wells drilled at regular locations; and, 3) that the volume of otherwise unrecoverable hydrocarbons is substantial. While the instant application seeks rescission and modification of a Final Default Order as opposed to an exception to Commission rules, the same legal standard regarding the prevention of waste applies.

Dyne's purported evidence that waste will occur as a result of the Commission's prior order is woefully deficient. Dyne's argument rests solely on the results of the bailing test it performed six months after it was ordered to plug Well No. 6. Assuming that the bailing test accurately reports that 1.3 barrels were recovered in 45 minutes, Dyne extrapolates that 40 barrels a day could be recovered if the well was re-equipped and placed on pump. No evidence was submitted that supported Dyne's extrapolation of a 40 BOPD potential for the well. Furthermore, Dyne clearly does not intend to produce the well as it has already entered into an agreement to transfer any rights in the Gray Lease to another operator.

In addition, Commission records indicate that Dyne's conclusion that the well has a 40 BOPD potential is chimerical. Production records indicate that prior to the entry of the Final Default Order in October 2000, there was no production on the Gray Lease after April 1, 1998. The production reported for all of the wells on the Gray Lease from January 1997 through March 1998 totaled 73 barrels of oil, an average of less than 5 barrels per month for the entire Gray Lease. Dyne admits that the well is not currently equipped for production and did not produce in the three year period from October 1997 through October 2000. Additionally, the permit authorizing the well to be used for injection required Dyne to file an amended W-1 before it converted the well back to production. There was no filing of the required amended W-1 after the well was permitted. Accordingly, it is appropriate to conclude from the Commission records that no production can be attributed to this well from January 1988 until the bailing test in April 2001. Dyne's suggestion that Well No. 6 has a 40 BOPD potential where the well is not equipped for production, has not produced in at least 14 years, and where the entire lease has not reported production of more than 8 barrels per month since January 1997, is not supported by the evidence. Accordingly, this evidence is not sufficient to show that Well No. 6 will recover a substantial volume of oil.

In addition, Dyne failed to submit any evidence supporting the second element of a waste case. There was no evidence that other wells on the Gray Lease would not recover any oil which Well No. 6 could potentially recover. Eleven other wells on the Gray Lease were not required to be plugged under the terms of the Default Final Order. Additionally, there is no evidence as to whether wells offsetting the Gray Lease could potentially recover any remaining oil. Dyne's failure to show that other wells could not recover the same oil, is a further basis for denying the requested

recession and modification of the prior order.

Based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Applicant Dyne Oil & Gas, Inc. (“Dyne”) was given at least 10 days notice of this proceeding by certified, first-class mail, addressed to its most recent Form P-5 (Organization Report) addresses. Applicant appeared at the scheduled time and place for the hearing and presented evidence.
2. Dyne designated itself as the operator of the Gray Lease (“subject lease”) by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) effective October 1, 1989.
3. A Default Final Order in Oil & Gas Docket No. 10-0224181 was entered by the Commission on October 10, 2000, which required Dyne to plug Well No. 6 on the Gray (01708) Lease, Panhandle Gray County Field, Gray County, Texas.
4. Dyne last reported production on the subject lease in March 1998. Commission records show the total reported production for the Gray Lease between January 1997 and March 1998 to be 73 barrels. The average lease production during this period was less than 5 barrels per month, with a maximum reported monthly production of 8 barrels. This is less than one barrel of oil per well, per month.
5. On December 3, 1987, Dyne filed an application to convert Well No. 6 to an injection well. The well was permitted as an injection well on January 13, 1988. No injection activity was ever reported for Well No. 6.
6. Dyne did not re-equip Well No. 6 for production or file an amended Form W-1 (Application to Drill, Deepen, Plug Back or Reenter) to convert it to a producing well as required under the provisions of the injection well permit. There are no records that Well No. 6 was converted to a producing well after January 1989.
7. Well No. 6 is not capable of recovering a substantial volume of oil that would not otherwise be recovered by another well.

### **CONCLUSIONS OF LAW**

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.

3. Dyne failed to establish that rescission and modification of the Final Order entered in Oil & Gas Docket No. 10-0224181 was necessary to prevent waste.

**RECOMMENDATION**

The examiners recommend that Dyne Oil & Gas, Inc.'s application be denied.

Respectfully submitted,

Mark J. Helmueller  
Hearings Examiner

Margaret Allen  
Technical Examiner